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What provisional measures will the UPC be able to grant?

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The UPC will have the power to:

- order provisional measures to preserve evidence and the inspection of premises, or "saisie-contrefçon" (Article 60.1 and .3 of the UPC Agreement),
- order a party to produce evidence (Article 59 of the UPC Agreement),
- order a party not to remove from the UPC's jurisdiction any assets, or "freezing orders" (Article 61.1 of the UPC Agreement),
- grant provisional and protective measures such as injunctions against an alleged infringer or any intermediary (Article 62.1 of the UPC Agreement),
- order the seizure or delivery up of products suspected of infringing a patent, as well as the precautionary seizure of the movable and immovable property of the alleged infringer, including the blocking of the bank accounts and of other assets of the alleged infringer (Article 62.3 of the UPC Agreement).

Will the UPC take into account the strength of a plaintiff's case when deciding on such measures? Will it take into account any other factors such as the urgency of the case and the effect of such measures on the defendant?

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Before granting an injunction, the UPC will weigh up the interests of the parties and in particular take into account the potential harm for either of the parties resulting from the granting or the refusal of the injunction (Article 62.2 of the UPC Agreement; see also Rule 211.3 of the draft Rules of Procedure of the UPC). Factors which the UPC shall take into account include - under Rule 209 of the draft Rules of Procedure of the UPC:

- the outcome of any opposition proceedings before the European Patent Office or any other proceedings before a national court,
- the urgency of the case,
- whether the defendant has been heard and
- whether any protective letter has been filed.

The UPC may also require the party applying for an injunction to provide reasonable evidence in order to satisfy the UPC with a sufficient degree of certainty that the party is the right holder and that his right is being infringed, or that such infringement is imminent (Article 62.4 of the UPC Agreement).

Can the UPC grant interim measures which restrict the activities outside of the Contracting Member States?

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The UPC is a court common to the Contracting Member States (Article 1.2 of the UPC Agreement), in which it has exclusive jurisdiction. However, decisions and orders like for example an order to preserve evidence can under certain circumstances be enforced outside the territories of the Contracting Member States in accordance with Brussels I Regulation 1215/2012.

Will the UPC grant interim measures without involving the defendant?

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Usually this will not be the case, but where necessary to avoid any delay which could cause irreparable harm to the patent proprietor, or where there is a demonstrable risk of evidence being destroyed, the UPC will have the power to grant - without hearing the defendant - provisional and protective measures (injunctions, seizure or delivery up) (Article 62.5 of the UPC Agreement). Similarly, the UPC may order measures to preserve evidence or inspect premises and grant freezing orders without hearing the defendant (Articles 60.5 and 61.2 of the UPC Agreement; see also Rule 212 of the draft Rules of Procedure of the UPC).

These provisions in the UPC Agreement correspond to Articles 7.1 and 9.4 of Directive 2004/48/EC on the enforcement of intellectual property rights.

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